

APPEAL FROM ORDER No 3 of 1999

Hon'ble MR.JUSTICE A.R.DAVE

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5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5: No

[illegible]

Versus

RAIJIBHAI N RATHOD

MR BHARAT T RAO for Petitioner
MR PF MAKWANA for the Respondents

Date of decision: 03/11/1999

Admit. Ld. Advocate Shri Makwana appears for the respondents and waives service of notice. At the request of the learned advocates, the appeal is finally heard today.

2. The appellants, original defendants, have challenged validity of order dated 18.12.98 passed below Ex. 5 in Special Civil Suit No. 586/95 pending in the court of the Civil Judge (S.D.), Vadodara.

3. The respondents-plaintiffs had filed a suit for partition claiming that the land bearing survey No. 457 which was in actual possession of the defendants and was also mutated in their names was a family property and the plaintiffs had a right therein. An application below Ex. 5 was also filed praying that the defendants be restrained from creating any hurdle in the event of the plaintiffs entering the land in question. By virtue of the impugned order, the trial court granted the application.

4. I have heard the learned advocates and have also perused the relevant records. Upon perusal thereof and after hearing the concerned advocates, prima facie it appears that father of the plaintiffs was tenant in respect of the land in question. It appears that the amount payable to the landlord was paid by defendant No. 1 and ultimately the land in question was mutated in the name of the defendants. It appears that permitting the plaintiffs to enter the land would create some problems because it appears that there is no harmony amongst the family members and that would create some complications at the time of cultivating the land in question.

5. Looking to the facts and circumstances of the case it appears that it would be just and proper if the plaintiffs are not permitted entry to the land in question but the defendants are directed to maintain accounts and the crop which might be cultivated is harvested in presence of the court commissioner. At least a month before the date of harvesting the defendants shall give intimation to the trial court so that a court commissioner can be appointed at the time of harvesting and details with regard to the total cultivation and crop harvested can be recorded.

6. In view of the above order, the impugned order dated 18.12.98 is quashed and set aside. The appeal is allowed.

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